



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220124-0032]

RIN 0648-BK55

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2021-2023 Small-Mesh Multispecies Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements final small-mesh multispecies specifications for the 2021 fishing year, and projected specifications for fishing years 2022 and 2023, as recommended by the New England Fishery Management Council. This action also increases the whiting possession limit for certain trips and restores the in-season adjustment trigger for northern red hake. This action is necessary to establish allowable harvest levels and other management measures consistent with the most recent scientific information. This rule informs the public of these final fishery specifications for the 2021 fishing year.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: The New England Fishery Management Council prepared an environmental assessment (EA) for these specifications that describes the action and other considered alternatives. The EA provides an analysis of the biological, economic, and social impacts of the preferred measures and other considered alternatives; a Regulatory Impact Review; and economic analysis. Copies of these specifications, including the EA, Regulatory Flexibility Act Analyses, and other supporting documents

for the action are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

These documents are also accessible via the Internet at

<https://www.nefmc.org/management-plans/small-mesh-multispecies>.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Policy Analyst, (978) 282-8456.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council manages the small-mesh multispecies fishery within the Northeast Multispecies Fishery Management Plan (FMP). The small-mesh multispecies fishery is made up of three species of hakes that are managed as five stocks: Northern and southern silver hake; northern and southern red hake; and offshore hake. Southern silver hake and offshore hake are often grouped together for management purposes and collectively referred to as “southern whiting.” Amendment 19 to the FMP (April 4, 2013; 78 FR 20260) established a process for specifying catch limits for the small-mesh multispecies fishery stocks; including values for an overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL), and total allowable landings (TAL). The FMP requires that this specifications process be implemented on an annual basis for up to 3 years at a time with each fishing year running from May 1 through April 30. This action implements catch limit specifications for the 2021 small-mesh multispecies fishery, and announces projected specifications for fishing years 2022 and 2023 based on the Council’s recommendations. This action also revises some management measures to reduce regulatory discards in the fishery and increase the opportunity to achieve optimum yield.

The proposed rule for this action published in the **Federal Register** on June 11, 2021 (86 FR 31262), and comments were accepted through June 28, 2021. NMFS received no comments from the public.

Final Specifications

This action implements the Council's recommendations for 2021 and projected 2022-2023 small-mesh multispecies catch specifications, as well as revised management measures to reduce regulatory discards, as outlined in the proposed rule. Specifications for fishing years 2022 and 2023 are projected to be the same as the 2021 limits (Table 1).

Table 1 -- Small-Mesh Multispecies Specifications for Fishing Years 2021-2023 (metric tons), with the Percent Change in the TAL from Fishing Year 2020

	OFL	ABC	ACL	TAL	Percent Change
Northern Red Hake	Unknown	3,452	3,278	1,405	+413
Northern Silver Hake	39,930	20,410	19,387	17,457	-34
Southern Red Hake	N/A	1,505	1,429	422	+89
Southern Whiting	72,160	40,990	38,941	28,742	+99

*Southern whiting includes both southern silver hake and offshore hake.

In a separate action (Framework Adjustment 62 to the Northeast Multispecies FMP), the Council adopted a 10-year rebuilding program for southern red hake because this stock was declared overfished in 2018 (see the final rule at 87 FR 3694, January 25, 2022). Although the quota for southern red hake implemented in the action will increase while this stock enters a rebuilding period, this adjustment is intended to reduce regulatory discards by converting more catch to landings and allow continued operation of the fishery while still enhancing the rebuilding potential for southern red hake. The Council's recommended ABC for southern red hake is 75 percent of what was recommended by the Council's Scientific and Statistical Committee, in accordance with the rebuilding plan.

This action also revises management measures within the small-mesh multispecies fishery to reduce regulatory discards and improve fishery operations. The possession limit for whiting (silver hake and offshore hake) on trips using gear with less

than 3-inch (7.6-cm) mesh is increasing from 3,500 lb (1,587.6 kg) and 7,500 lb (3,401.9 kg) to 15,000 lb (6,803.9 kg). Additionally, the in-season adjustment trigger for northern red hake is being restored to 90 percent of the annual quota from the current 37.9-percent trigger. This is intended to allow the fishery to harvest the TAL without being prematurely restricted by a reduced possession limit by bringing the starting point for the post-season ACL overage accountability measure back to the original trigger level. The Council will review the projected 2022 and 2023 specifications to determine if any changes need to be made prior to their final implementation. NMFS will publish a notice prior to the start of each fishing year to confirm the projected specifications or announce any necessary changes.

Changes from the Proposed Rule

NMFS has not made any changes to the proposed regulatory text and there are no changes from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that these final specifications are necessary for the conservation and management of the small-mesh multispecies fishery, and that they are consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Council reviewed the regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Act.

This final rule is effective upon the date of publication in the **Federal Register** [*insert date of publication in the FEDERAL REGISTER*]. This final rule is not subject to the Administrative Procedure Act (APA) provision requiring a 30-day delay in the date of

effectiveness because this rule falls within two of the APA exceptions (5 U.S.C. 553(d)(1) and (3)). The first exception, at 5 U.S.C. 553(d)(1), applies for a substantive rule that relieves a restriction. This action relieves a restriction by increasing annual quota catch and possession limits for several stocks in the small-mesh multispecies fishery. Specifically, in order to provide additional flexibility to the fishing industry and reduce unnecessary regulatory discards, this final rule increases commercial quotas for three of the four hake stocks managed in this fishery, increases the possession limit of whiting for vessels using a certain mesh size to 15,000 lb (6,803.9 kg), and increases the threshold trigger to 90 percent of the TAL for when northern red hake inseason accountability measures must be implemented.

In addition, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in this rule's effective date for the following reasons. Waiving the delay in the date of effectiveness ensures that these final specifications are in place as close as practicable to the start of the 2021 small-mesh multispecies fishing year, which began on May 1, 2021. Although the 2020 catch limits have rolled over in the absence of implementation of these new specifications, the 2020 catch limits are not based on the most recent stock assessment data and are unnecessarily restrictive. A 30-day delay in the date of effectiveness that further postpones the implementation of the increase in whiting possession limits would be contrary to the public interest, as the lost economic opportunity during the period of the additional 30-day delay could cause potential economic harm to participants in the small-mesh multispecies fishery. Currently, unfavorable market conditions in the whiting fishery is the main reason that whiting catch is being discarded rather than being sold; however, market conditions can change at any time and become more favorable to landing whiting causing a higher percentage of vessels to be constrained by the lower power possession limit. Additional delay also could risk the unnecessary triggering of accountability measures for northern red hake

during the remainder of the fishing year under the current catch threshold of 37.9 percent before this action can raise the catch threshold to 90 percent. Finally, the additional time afforded by a 30-day delay in the date of effectiveness is not necessary in order for participants in the fishery to come into compliance with this rule. Vessels fishing for small-mesh multispecies will not be required to purchase new equipment or expend time or money to comply with these management measures. Compliance with this final rule does not require an adjustment period, because complying simply means adhering to the new catch limits and management measures set for the fishing year. In addition, fishery stakeholders have been involved in the development of this rule and are anticipating the implementation of this action.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none was prepared.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 26, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.86, revise paragraph (d)(1)(i) and remove and reserve paragraph (d)(1)(ii).

The revision reads as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(i) *Vessels possessing on board or using nets of mesh size smaller than 3 in (7.62 cm). Owners or operators of a vessel may possess and land not more than 15,000 lb (6,804 kg) of combined silver hake and offshore hake, if either of the following conditions apply:*

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). “Incorporated into a fully constructed net” means that any mesh

smaller than 3 inches (7.62 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

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3. In § 648.90, revise paragraph (b)(5)(iii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

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(b) * * *

(5) * * *

(iii) *Small-mesh multispecies in-season adjustment triggers.* The small-mesh multispecies in-season accountability measure adjustment triggers are as follows:

Species	In-season adjustment trigger (percent)
Northern Red Hake	90
Northern Silver Hake	90
Southern Red Hake	40.4
Southern Silver Hake	90

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